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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 645.

JOSEPH LEE JONES and BARBARA JO JONES,

Petitioners,

vs.

**ALFRED H. MAYER COMPANY, a corporation,
ALFRED REALTY COMPANY, a corporation,
PADDOCK COUNTRY CLUB, INC., a corporation,
ALFRED H. MAYER, an individual, and an
officer of the above corporations,**

Respondents.

BRIEF OF AMICUS CURIAE, THE PATH ASSOCIATION, IN SUPPORT OF PETITIONERS.

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January 15, 1968.

TABLE OF CONTENTS.

I. Interest and Position of Amicus -----	2
II. PATH's Findings and Data as to Cleveland Housing Patterns -----	3
III. Consequences of Racial Restrictions in Cleveland	6
—New Housing For Negroes Limited -----	6
—Restricted Housing Limits Negro Opportunities	8
Conclusion -----	9

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The PATH Association, with the consent of counsel for the petitioners and respondents herein, files this brief as *Amicus Curiae* in support of the position of Petitioners to reverse the judgment of the United States Court of Appeals for the Eighth Circuit below. 379 F. 2d 33 (1967). Information contained in this brief purports to indicate the adverse effect of racially restricted housing developments, such as that of Respondents herein, on the development of new housing units for and the accessibility of land and decent housing to the Negro living in the greater Cleveland community.

I. INTEREST AND POSITION OF AMICUS.

The PATH Association (PATH stands for Plan of Action for Tomorrow's Housing) is a broadly based citizens group organized in Cleveland, Ohio early in 1967 to take positive action in the field of housing in the greater Cleveland metropolitan community. It has the financial support of local residents and foundations, as well as the active participation of leaders in the Cleveland civic, governmental, business and social welfare communities. PATH is not primarily concerned with fair housing as such; rather, it aims to bring about action to provide decent housing in a suitable living environment for every Clevelander. But a thorough study and report of Cleveland housing circumstances has led PATH to the conclusion that it is not possible to reach this goal if there is continued racial discrimination and restriction in housing.

PATH supports the position of Petitioners that the import of the Civil Rights Act of 1866 and the Fourteenth Amendment to the United States Constitution, in accordance with the developing recent opinions of this Court interpreting their provisions, barred the sort of racially based private restrictions in housing and land development as indicated by the facts herein. This brief will not cite or repeat the arguments and authorities contained in Petitioners' brief other than to express support and agreement therewith. PATH hereby submits its data and findings from the Cleveland experience to demonstrate that such racial restriction acts to inhibit and deter development of decent housing for Negroes, which in turn is one of the most significant factors in producing the cultural, economic and educational deprivations which the Negro faces today in Cleveland and in other comparable large metropolitan areas of the United States.

II. PATH'S FINDINGS AND DATA AS TO CLEVELAND HOUSING PATTERNS.

PATH has found and publicly reported that Cleveland is one of the most racially segregated communities in the nation in housing.¹ Of Negroes in Cuyahoga County, Ohio, 90% live in Cleveland proper, almost all on the city's east side. Of Negroes living in Cleveland, 85% live in census tracts with at least a 70% Negro population; 50% of Negroes in Cleveland live in census tracts with a 95% or greater Negro population.

Growth of the Negro population of Cleveland occurred largely in the last half century. The number of non-whites in Cleveland in 1910 was 8,738; by 1960 this number was 253,108, and by 1965 it was 279,352. Meanwhile the white population of the City declined from 765,264 in 1950 to 622,942 in 1960, to 531,506 in 1965. Thus the percentage of non-whites in the City went from 1.6% in 1910, to 28.9% in 1960, to 34.5% in 1965.

The increasing need for housing which results from population increase is compounded for the Negro in Cleveland's "inner city" by aging and deteriorating housing conditions. Of the housing units in the City of Cleveland which were substandard (as defined by the U. S. Census Tract Classification) as of 1960, about 35% were occupied by Negro families. And almost all new, privately constructed housing in the City, meager as it is, is not available to Negro families.

The outward movement of the Negro population from the inner city has been almost solely to the east and the

¹ Data and determinations of fact on the Cleveland situation as hereinafter reported are taken from the Report of The PATH Citizens Advisory Committee (March, 1967); Bureau of the Census—U. S. Department of Commerce, *Census of Population, Cleveland, Ohio, 1910 through 1965*; and the published studies of The Regional Church Planning Office, Cleveland, Ohio.

southeast. The movement has been for the most part into contiguous white neighborhoods so that concentration is enlarged into a single expanding pocket. The wave process is demonstrated by the experience of the Lee-Harvard area of Cleveland where in five years, from 1960 to 1965, the Negro population increased from about 12% to more than 50% of the area's total population.

A few Negro families have moved out of this expanding pocket, mostly into contiguous suburbs such as East Cleveland, Shaker Heights, and Warrensville Heights. However, Negro migration to the suburbs has not been important enough to reduce the housing pressures in the Negro community. While the Negro population in the suburbs increased by about 14,000 in the period from 1960 to 1965, the Negro population in Cleveland increased by about 26,000.

The trend of population migration in Cuyahoga County points up the present demographic features of the Negro housing dilemma. During the 1950-1960 period more white persons moved out of Cleveland each year than moved into the city and this accounted for much of the population growth in suburban Cuyahoga County. From 1951 through 1955 the net migration of whites into suburban Cuyahoga County was approximately equal to the net migration of whites out of Cleveland. Beginning in 1956, however, the net white migration from Cleveland began to exceed greatly the net white migration into suburban Cuyahoga County. This marked the beginning of the major spillover of the white Cleveland area population into the adjoining sections of the adjacent counties, which sparked a housing boom in the counties surrounding Cleveland's Cuyahoga County.

Beginning in 1959 a small number of Negroes joined whites in the exodus from Cleveland. This combined

migration out of the City of Cleveland continues to exceed the combined migration into suburban Cuyahoga County, with the result that more people move out of the county as a whole each year than move in. Significantly, during the 1959-1964 period, the Negro population of suburban Cuyahoga County increased by an average of nearly 2,000 persons per year, mostly as a result of an increased migration of Negroes from the central city to the suburbs. In 1965 to 1967, the increase in the Negro population of the same area averaged about 7,000 per year so that nearly one-third of the net migration from Cleveland to suburban parts of the county has been a Negro exodus from the central city, mostly moving to three main cities in the suburbs.

There would appear to be three basic reasons why the Negro is confined within limited areas of greater Cleveland: poverty, choice and racial discrimination. The strongest of these is racial discrimination resulting in the lack of accessibility to housing and land. Although poverty among many Negroes is common, the Negro still is forced to pay more for his inadequate housing in the inner city than the white person of comparable income who is not confined in his choice of housing. Although some Negroes are reluctant to leave the security of their friends, churches and social life in the inner city, there are others who nevertheless can afford to and do want to live in the suburbs but are prevented from doing so. Discrimination in housing touches at the core of the problem of our segregated society, for housing in turn affects the social relationships of the Negro, his employment opportunities, and the educational facilities available to his children.

III. CONSEQUENCES OF RACIAL RESTRICTIONS IN CLEVELAND.

Two clear consequences have resulted from the racial restrictions which have barred Cleveland Negroes from access to new housing and land development: first, new housing is not available so that Negroes are forced into over-crowded and restricted housing rather than into new construction open to whites; second, their opportunity for advancement and change is seriously restricted by the limited real estate market and poor housing environment.

—New Housing For Negroes Limited.

More than 200,000 people in Cuyahoga County live in substandard housing. Of the nearly 60,000 substandard dwelling units in the county, about seven-eighths are in the city of Cleveland. The migrating Negro, to the extent that he is able to find open housing, eventually moves into older and usually leased tenancies rather than into a home ownership situation. In the period between 1950 and 1967, about 30,000 new dwelling units were constructed in the central city as compared with about 150,000 units in the rest of the County. Today almost no new construction is available to Negroes in the central City.

But migration of the Negro to the suburbs has been for the most part into used housing accommodations. Only about 150 new houses have been built for Negroes in suburban Cuyahoga County since 1959. In that same period approximately 30,000 Negroes moved from the central city to the suburbs. Meanwhile, approximately 125,000 whites migrated from the central city, some moving into new home accommodations of approximately 10,000 units.

Details of the migration of white persons from Cleveland demonstrate a pattern by which new housing developments will bloom to accommodate white persons

and then wither in the face of increased Negro movements. It is clear that much of the demand for new housing in suburban Cleveland in recent years has resulted from the movement of white residents of Cleveland to the suburbs. When there was a large white migration from Cleveland to suburban Cuyahoga County a large building boom in suburban Cuyahoga County followed. But for the growing Negro migration from Cleveland to the suburbs in recent years, there is not an equivalent boom in new housing starts, partly because land and development projects are not available to Negroes. The pattern has been for Negro families moving from Cleveland to the suburbs to move into existing housing since new housing is reserved for whites. Unless Negroes are able to acquire new housing in the suburbs, Negro migration from Cleveland will not lead to new housing starts, regardless of the nature of the credit market.

At the same time that the private developer will not provide the necessary new housing accommodations for the Negro, the circumstances of racial restrictions and discriminatory attitudes resulting from this refusal reverberate to limit the effectiveness of a number of federal and local programs which have the purpose of increasing housing units in Cleveland. For example, no suburban communities have by ordinance permitted the construction of public housing accommodations in areas of Cuyahoga County outside of the city of Cleveland primarily because of opposition to Negroes in the public housing projects. This is in spite of the fact that the Cleveland Metropolitan Housing Authority is empowered to build county-wide.

Furthermore, in Cleveland by City ordinance leased public housing accommodations are confined only to active urban renewal projects. This makes the program highly ineffective because of the extremely deteriorated condition

of the accommodations in urban renewal areas. Once again, the purpose of this ordinance is to preclude Negroes from moving into white neighborhoods. Also the effectiveness of such programs as those undertaken under Section 221(d)(3) of the National Housing Act (providing below market loans for non-profit housing corporations) is seriously limited because practically these projects can only be built in substantially Negro areas.

—Restricted Housing Limits Negro Opportunities.

The net result of racial discrimination and restrictive practices in privately developed projects and the inability of public programs to acquire land and develop housing for Negroes outside of badly deteriorated areas is a continuation of the Negro ghetto. The Negro is contained in circumstances of cultural, economic, educational and social deprivation. The trend of inaccessibility to new housing is an ever-widening gap between the residents of the central city and the people living in suburbia.

Already nearly one-third of the residents of the central city are receiving public support benefits such as social security (130,000), veteran's disability or pension payments (40,000), public welfare (82,000), subsidized housing (27,000) and other programs. Cleveland is increasingly becoming the home of the poor, the powerless, the elderly, the crippled, the unemployed and the rejects of society while nearly all the members of the middle and upper classes live in the suburbs. These trends cannot be reversed to prevent this economic and social compartmentalization of the population of the Greater Cleveland area until there is a substantial increase in the supply of attractive middle class housing in the central city as well as suburban housing open to all.

In spite of the recent apparent increase in the Negro's economic capacity and desire to improve his living conditions, the free market place in available housing units does not operate to accommodate this demand. While the suburbs otherwise flourish economically, the Negro is barred from full participation. Thus housing restriction plays a major role in retarding the Negro advance to a full share in the benefits of American life.

The existence of an artificial real estate market prevents the free exercise by the Negro of choice of design, location and price in housing facilities. Such freedom would allow the processes of the open market to operate on the basis of economic capability. Otherwise, the Negro's increased economic power is useless and the value of his dollar is debased. Racial restriction in housing thus imposes an onerous economic and social penalty on the Negro just when the strongest efforts of the American government, courts and people are moving to provide full opportunity for the realization of Negro aspirations.

CONCLUSION.

For the foregoing reasons and in accordance with the arguments of Petitioners' Brief, the judgment of the Court of Appeals for the Eighth Circuit should be reversed.

Respectfully submitted,

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